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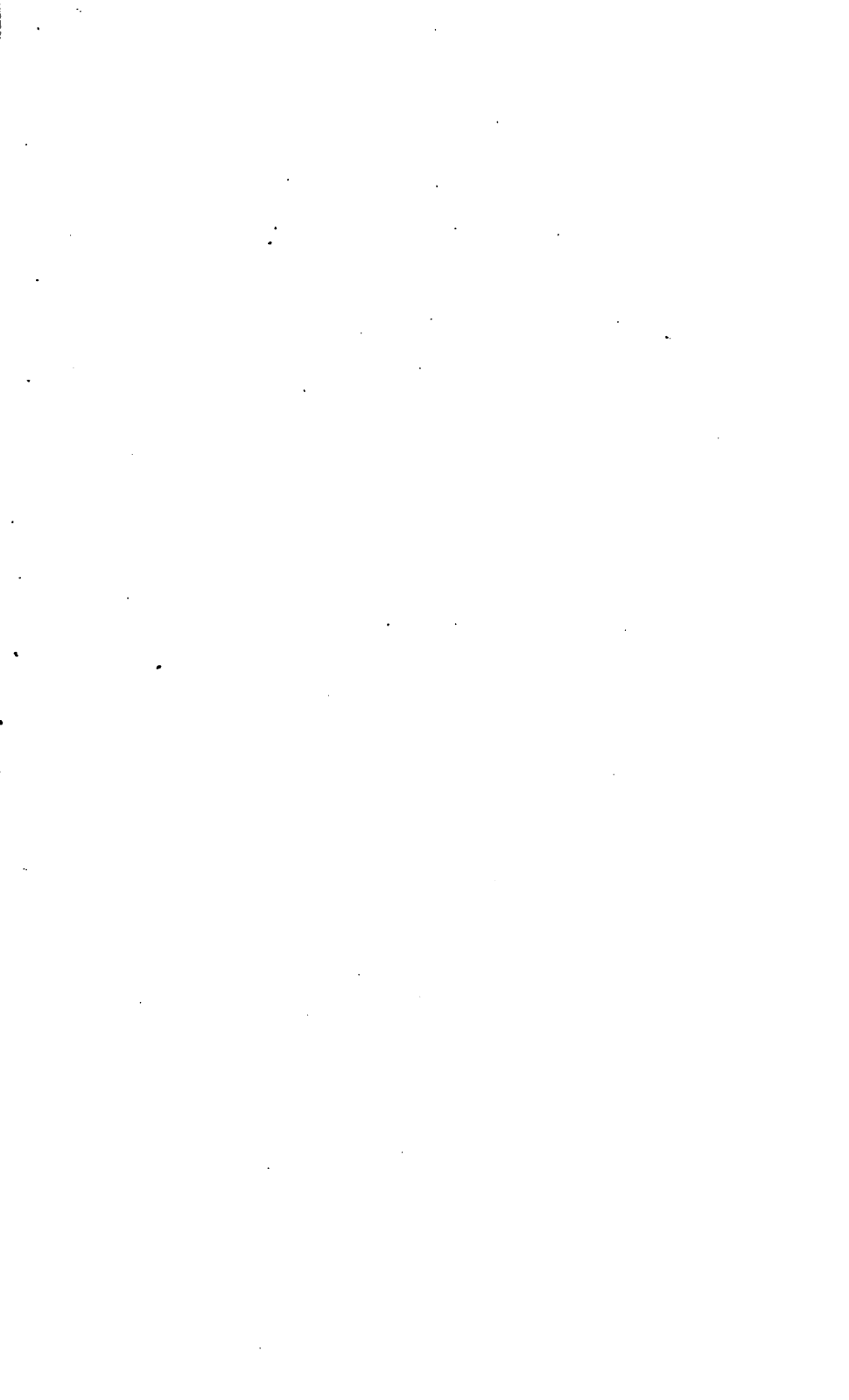
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1918



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AN ADDRESS

PREPARED BY THE LATE

JOHN A. VANDERPOEL,

OF THE NEW YORK BAR,

FOR DELIVERY TO THE

Alumni of Columbia College Law School,

ON THE EVENING OF

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FROM
THE REQUEST OF
EVERT JANSEN WENDELL
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PREFATORY NOTE.

The following Address was, at the request of the Alumni of Columbia College Law School, prepared for delivery before them, at the last Commencement in May, 1866. It was unfinished when its lamented author died. It is printed just as it was found among his manuscripts. This explanation is rendered necessary by the fragmentary condition of a portion of the Address.

It was thought by the Trustees of the College that it would be gratifying to Mr. Vanderpoel's many friends to be able to preserve in a permanent form his latest effort in behalf of a science which he loved so much. It was also thought that the Address exhibited in a remarkable degree the purity and elevation of his character, the loftiness of his aim, and the steadiness of his purpose, and that by its publication, the influence of his example might be extended to his associates, and to law students in general.

The writer of this note cannot refrain from expressing on his own behalf his deep regard for the memory of his beloved pupil, and his sense of the serious loss sustained by the community by reason of the early death of one who combined, in a rare degree, high mental and moral qualities which gave promise of the most marked success in the profession of his choice.

THEODORE W. DWIGHT,
Professor of Law in Columbia College Law School.

ADDRESS.

Enthusiasm is the strongest motive power of the moral world. Where it does not exist, the smallest difficulty disheartens, the least obstacle diverts, the weakest opposition prevails. Where, however, its electric power is felt, it braces the nerves and fires the soul with an almost superhuman energy. Difficulties but animate, obstacles quicken, and opposition arouses its headstrong fervor. In every calling, honorable or dishonorable, sacred or profane, it is Enthusiasm always which underlies success. It was this that made an itinerant monk the inspirer of the martial spirit of Europe and the leader of hosts of devotees to the holy sepulchre; it was this that nerved the heroic Xavier with a fortitude that neither hardship nor persecution could bend; it was this that bore up the ardent Fresnel under the ravages of disease until he had gained for his name an immortal homage. It has always been this that won the crown of martyrdom, the wreath of laurel, the chaplet of ivy.

Now, in no walk of life is this exalted quality more necessary or more efficient than in our own.

Search the historical annals of the law and you will never find apathy and fame associated together. Enthusiasm is here the principal condition of success. Impressed with this belief, and firmly convinced that in all right-minded persons, Enthusiasm itself is grounded in reverence, I shall with diffidence attempt to strengthen in your minds the former sentiment by expounding to you to-night a few of the more prominent claims of the law upon the latter, fondly hoping that in some of my auditory I may thus be the instrument in laying at least one stone of a foundation on which is hereafter to be based a permanent and brilliant success.

I. The law, then, in the first place claims our reverence, because it is a *science*. The importance of apprehending this truth cannot be overestimated. No other conception of the law is consistent with its proper administration; for, if not a science, then it is a mere collection of arbitrary judgments, varying with the caprice or bias of irresponsible lawyers, and our profession becomes a handmaid of injustice, a school for the practice of chicanery and intrigue. But it is deserving of no such stigma. For positiveness of structure and immutability of principle, the law is entitled to stand on as high a level as the sciences of astronomy, chemistry or mathematics. Every science has its fundamental principles, upon which the whole superstructure rests. These are

fixed and irreversible, and give consistency and harmony to the component parts.

The law is like other sciences in this respect. It has its primal and unchangeable principles, more stable than the adamantine rocks. They are the perfect rules of action prescribed for man's guidance in Holy Writ. They are also the dictates of a pure and enlightened conscience—the primary ideas of justice which the Creator has implanted in the bosoms of his creatures. These all are emanations of the mind of the Most High, and, like his essence, are eternal. Surely I am not extravagant in asserting so lofty an origin and so inflexible a character to the principles by which we are to be guided. Surely no one can desire to deny the glory which these qualities impart; for if I am in error, then is there no such thing as abstract justice, for there is no infallible standard by which we are to determine what is just, and

“ if this fail,
The pillared firmament is nothingness,
And earth's base built on stubble.”

But I am confident that I am strictly within the confines of truth, and that I cannot too positively insist on the near alliance of these propositions with a right appreciation of the true character of our profession and its correct and honorable practice.

Those who do not accept or realize this truth will often degrade the law into a burdensome and arbitrary means of oppression, and thus expose it to de-

served execration and contempt. In their hands it becomes "the two-edged sword of craft and oppression," instead of "the staff of honesty and shield of innocence." It is no longer law in its true and only sense of justice. To call it law, is to confound two principles as eternally irreconcilable as right and wrong; it is to trick off the repulsive features of vice in the insignia of purity and truth. But remember, such perversions shall not be forever. Woe to that man who shall practice them, whether in ignorance, or worse, in willful indifference and fraud. A just retribution must some day overwhelm him for trifling with what is so sacred. When truth, crushed to earth by his careless or impious hand, shall rise again—as rise she must—so sure as "the eternal years of God are hers," the hollow glory of his name shall wither beneath the scorching breath of deserved condemnation, and his memory "be damned to everlasting fame." Aye, they shall not be forever. There is consolation in that thought which we would not abandon. Not forever shall ignorance ignore, and vice vitiate, and presumption defy the fundamental principles of the law. The day shall come when the clouds and darkness which encompass them shall be scattered abroad like mists from the mountain side, and, like the mountains, they will rise upon the entranced view resplendent and sublime, with sides seamed, it may be, by the lightning, the torrent, and other hostile elements, but with founda-

tions deeply rooted, their summits bathed in an effulgence dazzling and divine.

II. The law, in the next place, claims our reverence for its gray antiquity. Its birth was amidst the semi-barbarism of a twilight age, now so remote, and so dim from remoteness and its inherent obscurity, that its faint glimmerings shed but a ghostly light on the path of him who essays to penetrate it, and leaves its page in history dark and mysterious. Cradled amid such hostile and unpropitious circumstances, the law owed its life only to the necessity which nursed it, and to its own purity and strength. These enabled it to resist the rude shocks of those turbulent times, and outliving them, to become almost the only legacy which they have bequeathed to their more enlightened successors.

But more than this; though the origin proper of the common law is to be referred to that age when England was an island little known, whose pathless forests were the haunts of wild beasts, and whose infrequent hamlets were the homes of scarcely less wild men, yet there are large portions of the *present* law since engrafted on the original stock, which date back to an era even more remote. For, as the growth of the nation gave rise to new complications in human affairs calling for new legal remedies to solve them, English jurists had recourse to the legal storehouses of Greece and Rome, and from them extracted some of the choicest treasures, which they incorporated

into the structure which they were erecting. As these appropriations were made with a sound and discriminating judgment, they have remained for the most part intact down to the present day. So that we of the nineteenth century live under laws made conformable to the genius of our institutions, but which were first framed before the pride of the Peloponnesian Republic had knelt to the victorious legions of Alexander, or before the sceptre had departed from the world-wide empire whose centre was on the Seven Hills.

Still other portions of the law were imported from the continent at an early day while England was passing successively under the yokes of the rude Saxon, the sea-faring Dane and the more polished Norman. For as they, in time, gained supremacy in the kingdom, they re-modeled its laws and added many, derived from the juridicial systems of their native lands. Some of these are still in full vigor and operation, and to the intelligent student are invested with the romantic interest which attaches to the age to which they belong.

III. The law, again, has its historical associations independent of its antiquity, deserving our appreciation and reverence. The field, however, which this subject opens is one so vast that it would be quite incompatible with the limits of my discourse to examine it in detail. I must limit myself, therefore, to a most rapid survey, in which I can only take

in a few of its most salient points. And prominent among these, is the glorious association of the law with the long and brilliant army of eminent names identified with its development and edification—names which England and America hold in their most sacred keeping and adorn with laurels of unfading green.

I point to the familiar names of

and challenge any other profession to show a galaxy so bright. Strange would it be if the recital of such names should not awaken emotions of reverence and proud satisfaction in the breast of every one who is allowed to follow in their footsteps and to participate in the rich legacies which they bequeathed to those who should come after them.

Not less moving in a historical view of the law is the record of the trials that encompassed its birth, the dangers that have beset its existence, and the costly sacrifices that have cemented it in its present perfection and strength. These appear to me to give it a peculiar consecration and to constitute one of its strongest claims to our affections and reverence. We should be justified in setting but small store upon it if we knew it to be but the voluntary gift of some wise and philanthropic sovereign to fortunate, yet indifferent, subjects, who were not worthy of it because they knew not its worth. We might well prize it but little if it had been transmitted to us because no one had ever thought it of sufficient

consequence to assail. But when we know that it is the hard-won achievement of toiling and aspiring centuries, here a little, there a little, exemplifying ever in its history the truth of the Greek aphorism, “*χαλεπὰ τὰ καλὰ*,” when we know that many of its provisions, such as are to be found in the Constitutions of our States, were written in the blood of men who esteemed them of higher worth than life itself, and by their heroic fortitude secured for posterity the fruition of what they were only permitted to suffer and bleed for; and when we know that it has been assailed and defended most stubbornly, even unto death; that wars, foreign and intestine, have been waged for its protection, from the days of Magna Charta, in England, down to that dreadful and most sublime struggle in our own land, whose thunders still mutter and cries of anguish still wail; when we know such facts, can we refrain from yielding it our spontaneous and heartiest reverence, and may we not justly consider it a high distinction to be called as the champion of its honor and fair fame?

IV. The law, in the next place, claims our reverence for the beneficence of its aims. My remarks under this head shall be very brief.

The high aims of the law are so apparent upon the smallest observation, and to the humblest understanding, that I should be wanting in respect to you

were I to go into a long recital of items which are so palpable and trite.

When "man's first disobedience" destroyed his godlike nature, that knew no rule of action but its own pure impulse, and left in its stead a nature weak and rebellious, and calling for the restraints and guidance of laws human and divine, then the mission of the law began. It will end only when man's weakness is made strong, when his corruption is made pure, and he is reinstated in full likeness with his Maker. Till then, till human nature and justice are as one, and,

"Man, the brother, lives the friend of man"

the law will be invoked to quell the rising strife, to assuage angry discussion, and settle the disputed claims of contending parties; to overthrow vice, injustice and wrong; to stimulate virtue, justice and right; to favor and confirm the innocent; to visit its rigors upon the guilty.

V. And now, descending from the abstract to the concrete, I submit that the juridical system of our State is entitled to our homage and reverence because of its adaptation to realize these great and beneficent aims proposed.

Let us look for a few moments into the facts of the case.

Our equity jurisprudence, built up by such master

minds as Kent and Walworth, is generally acknowledged to be the most perfect fabric of the kind that human genius has ever reared. Our common law, as distinguished from equity, is in a large measure the common law of England, which has been eulogized in poetry and prose, by jurists and by laymen, in almost every civilized tongue, as the bulwark of liberty, the staunch defender of life and property, the manifold ægis to the weak from oppression, to the poor from extortion, to the innocent from harm. But more than this—New York, during the last thirty-five years, has distinguished herself more, perhaps, by her legislative reforms of the former law, than by her progress in any other respect. Those reforms have often been of the most radical character, involving an entire subversion of long established rules, and the substitution of new and untried ones. They were hazardous experiments, and, when first proposed, encountered the keenest opposition on the part of many who could not disengage themselves from the prejudices and partialities which an education in and practice of the old system had engendered. “What,” said they, “would you abolish the rule in Shelley’s case, which it required a long and memorable struggle to establish, and which is sanctioned by a usage of hundreds of years? Would you entirely change the status of the married woman, and loosen the marriage bonds by bestowing upon her an independent management and disposition of her property? Would you sweep away so many of

the time-honored technicalities of the law of real estate? Would you entirely suspend the old and familiar forms of common law actions? Such innovations will unsettle the foundations of society, they will introduce chaotic confusion where order now reigns, they will set us adrift on an unknown sea, where, if we be not shipwrecked, we shall be tossed and buffeted about until we flee for refuge to the haven whence we started. The vandals who dare to destroy landmarks clothed with the kindly growth of centuries, and hallowed by many associations, will be involved in shame and well-merited opprobrium."

But despite such violent hostility, despite such kindling appeals for the sacredness of old traditions which are oftentimes more powerful instrumentalities acting through the emotional nature than the most nicely constructed logic addressed to the intellectual, reforms were carried on to their final consummation, thanks to the efforts of a few distinguished men keenly alive to the existence of abuses and incumbrances in the law, and the necessity and possibility of expunging them.

Of course, I cannot here enumerate each peculiar feature of the new system, and show what has been its operation, and what the verdict passed upon it. I can only speak in the broadest terms, and of the most general results. Cold distrust and open disapproval have now given place to all but unanimous commendation and support. It has been found ne-

cessary to retrace but very few of our steps in the new path, but each succeeding year is rather confirming us in our advanced position by adding fresh testimonials to our wisdom and courage. Many of our sister States have appropriated almost the whole of our new system and made it a part of their own. Even England, so stubborn, so wedded to old traditions, so unwilling to learn anything of her precocious trans-Atlantic offspring, has been constrained to adopt some of our innovations because of their undeniable and most apparent worth. All honor, then, to our State as the pioneer in this field, and all honor to its system of law with which we fear not to challenge comparison.

VI. Another claim of the law upon our reverence, is the influence which its study and practice are capable of exerting on the lawyer. This influence is two-fold in character, involving the mental and the moral nature.

The moral influence is one which I am well aware is not always experienced, but that it may be enjoyed by the heart that is open to receive it, I am equally well persuaded. The law, as it has been truly and eloquently said, "has its seat in the bosom of God," and he who with devout and longing spirit draws near to that sacred source, even though it be in the service of others, may drink without stint from its life-giving streams and invigorate his own thirsting soul with its exhaustless waters. This is, indeed,

no common privilege, and when it is realized it clothes our profession with a dignity and beauty to which few can aspire.

The mental influence attendant upon the pursuit of the law is more generally experienced and more apparent in its results. The lawyer, in order to equip himself for the exigencies of his profession, must store his mind with material of almost every description. He is debarred from concentrating his energies and attention upon any one theme. The diversity of his practice demands a diversity of knowledge. The knowledge of legal forms and principles is but a small part of what he must acquire, because he can only truly bring these into practice when he has thoroughly mastered the facts to which they are to be applied. Scarce any attainment, therefore, can be rejected by him as useless or irrelevant. The great Coke has somewhere said that there is no kind or degree of knowledge whatsoever so apparently vain and useless that it shall not, if remembered, at one time or other serve the lawyer's purpose.

Now this liberality of culture, so essential to success at the bar, will almost always save the mind from running into idiosyncracies and excess. It produces a calm and salutary equipoise in which no faculty lies dormant through disuse, and no one is abnormally forced, to the dwarfing and decay of others, but every power is trained to a high degree of precision and strength, and all unite in a harmonious and efficient whole.

VII. And finally, the law deserves our reverence for the rewards which she prepares for those who are faithful and steadfast in her service.

This subject has been partially anticipated under the previous head, but it will, I think, bear a somewhat fuller analysis.

It has been said :

“ Quis enim virtutem amplectitur ipsam, Præmia si tollas ? ”

And although we may not be willing to embrace this sentiment in its fullest extent, but feel rather that in the case of virtue it is its own reward, still in most domains of human activity it is reasonable to demand some return for the expenditure of time and labor, and to value an employment by the number and worth of its fruits. Our own profession, when judged by this standard, asserts its claim to a high and honorable rank, for few can surpass it in the variety and dignity of the rewards which it bestows.

Is it the lawyer's fortune to preserve some grand and humanizing principle from impending danger, to establish some truth that is potent for the moral or material welfare of his race, or to break down, by his rigorous assaults, some barrier to the march of civilization or the advancement of human happiness, which though in conflict with the analogies of the law, has been set up by ignorance or fraud, and

become imbedded there, like the shipwreck in the sand?

Such transcendent services would be recorded as in letters of brass in the hearts of his countrymen, and transmitted as a precious and imperishable legacy linked with the author's name from one generation to another.

Or, if the lawyer be not destined for so lofty a mission, he will not, if faithful, go unrewarded. He will be requited with the respect and gratitude of those of his fellow men to whom he has been able to bring protection or relief. But besides such rewards which are objective in their nature, there are others, also of a subjective character, having their origin in the inward consciousness and life of every one who attains them.

* * * *

I may be accused of an unwarrantable ardor in these details, of a quixotic estimate of the merits and capabilities of my profession, of an overweening and perhaps an arrogant desire to prove it in every respect that which I would have it to be, and to elevate it above the level to which the ordinary judgment has consigned it. But I ask for a suspension of such criticism, unless it be founded on well digested facts; I plead for a fair and deliberate investigation of what I assert. I would have the detractors of my profession, if any there be here to-night, divorce themselves, if possible, from any pre-existing prejudice against those who administer the law, many

of whom, I know, would degrade it to their own debased level, and test it by its own merits alone. I would have them inquire whether *in the abstract*, the law has not as pure and dignified a character, as hallowed and venerable associations, as lofty a mission, and as large a capacity to benefit and reward, as I, in my poor words, have striven to depict. And if they will, with candid and unbiassed judgments, examine these questions, they will, I am confident, support, if not surpass me in the views which I have expressed, and which I with gratitude acknowledge to be in a large measure the fruits of the teachings so faithful, so lucid, and so interesting, and the example so lofty, of the honored head of this institution.



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